255898 - A Christian woman wants to stipulate that if they become Muslim, her husband should not take a second wife

the question

There is a Christian woman who is married and has three children. She is close to entering Islam – by Allah's leave – but her husband is also Christian, and she is afraid that if her husband becomes Muslim, he will take a second wife. Can she stipulate in the marriage contract that her husband should not take a second wife? Please note that at present they are not Muslim, but after they become Muslim – by Allah's leave – is it valid for them to write this condition in the marriage contract?

Detailed answer

Praise be to Allah.

Firstly:

Stipulating that the husband should not take a second wife is one of the conditions that it is permissible for a wife to stipulate, according to the madhhab of Imam Ahmad (may Allah have mercy on him). It was also narrated from some of the Sahaabah and Taabi'een, and was the view favoured by a number of senior scholars. The permissibility thereof has been discussed previously in the answer to question no. 108806.

Secondly:

If a couple become Muslim around the same time, and there is no lengthy interval in between, or if the husband becomes Muslim before the wife's 'iddah following her becoming Muslim ends, then their previous marriage contract remains valid.

In this case, it is not valid for her to stipulate that her husband should not take a second wife,

because the conditions that are valid in contracts are those that are stipulated when the contract is first drawn up, or they are agreed upon before marriage.

If the wife becomes Muslim before her husband, and her husband delays becoming Muslim until her ‘iddah has ended, then in this case their marriage is annulled. Then if her husband becomes Muslim after that, it is essential to draw up a new marriage contract between them, according to the majority of scholars, in order for it to be permissible for her to go back to him.

In this case – that is, if they want to do a new marriage contract, there is nothing wrong with her stipulating whatever conditions she wants to, to be included in the new marriage contract.

And there is nothing wrong with her stipulating that he should not take a second wife.

Ibn Qudaamah (may Allah have mercy on him) said:

If one of the spouses becomes Muslim, and the other delays becoming Muslim until the woman’s ‘iddah has ended, then the marriage is annulled, according to most of the scholars.

End quote from al-Mughni (7/154).

We have previously discussed this issue and explained that the more correct view is that after the ‘iddah has ended, the woman has the choice: she may either wait for her husband to become Muslim, and if he becomes Muslim, then she may go back to him on the basis of the first marriage contract, or she may marry someone else if she wishes.

See the answer to question no. 21690.

Thirdly:

With regard to conditions added to the contract after it has been concluded, they are not binding upon either party.

Al-Mirdaawi al-Hanbali (may Allah have mercy on him) said:

The time for mentioning conditions with regard to marriage is at the time of drawing up the contract. This was stated by al-Muharrir and others.

Shaykh Taqiy ad-Deen (may Allah have mercy on him) said: The same applies if they agreed on the condition before the contract was drawn up, according to the prevalent view of the madhhab.

I say: This is the correct view, concerning which there can be no doubt.

If the condition is stipulated after the contract has been drawn up and become binding, then the view that was narrated from Imam Ahmad (may Allah have mercy on him) is that (this condition) is not binding.

End quote from al-Insaaf (8/154).

Shaykh Ibn ‘Uthaymeen (may Allah have mercy on him) said:

With regard to marriage contracts, it is not possible to add retroactive conditions.

With regard to sales contracts, it is possible to add conditions after the contract has been drawn up, such as conditions added before the two parties to the deal separate or if the option to add this condition is mentioned in the contract.

End quote from ash-Sharh al-Mumti‘ ‘ala Zaad al-Mustaqni‘ (12/163).

Fourthly:

What this woman should do is hasten to enter Islam, and not let the issue of her husband taking a second wife prevent her or her husband from becoming Muslim, because that comes under the heading of the Shaytaan trying to scare her and discourage her from becoming Muslim. So she should try to annoy the Shaytaan and pay no heed to his attempts to scare her or the negative thoughts that he casts into her heart to try to stop her and her husband becoming Muslim.

Rather she should think positively of Allah, may He be exalted, and realise that He will never forsake her if she becomes Muslim. Rather the more a person turns to Allah, the more Allah will

turn to him, love him, honour him and make his affairs easy for him. Allah, may He be exalted, says (interpretation of the meaning):

“And whoever fears Allah - He will make for him a way out

And will provide for him from where he does not expect”

[at-Talaaq 65:2-3].

We ask Allah, may He be exalted, to guide her and her husband.

And Allah knows best.